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Supreme Cimetent the Antien States

No. 70-5030

MARGARET PAPACHERITOU, ET AL.

CHY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DESTRICT COURT OF APPEALS OF PLORIDA, PIRST DISTRICT

PRIVITION FOR CHICKIORARI PILED CONTORUR 7, 1979
CHICHORARI GRANTINO JUNE 14, 1971

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, ET AL.,
Petitioners

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS
OF FLORIDA, FIRST DISTRICT

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Mandate of District Court of Appeal, First Distr. Florida	ict of

CHRONOLOGICAL LISTING OF IMPORTANT EVENTS

January 29, 1969 Hugh Brown arrested.

February 4, 1969 Hugh Brown tried, convicted, and sentenced in the Municipal Court.

February 20, 1969 Jimmy Lee Smith arrested.

February 27, 1969 Jimmy Lee Smith tried, convicted, and sentenced in the Municipal Court.

March 18, 1969 Henry Edward Heath arrested.

March 27, 1969 Henry Edward Heath tried, convicted, and sentenced in the Municipal Court.

April 18, 1969 Thomas Owen Campbell arrested.

April 20, 1969 Margaret M. Papachristou, Betty Jean Calloway, Eugene Eddie Melton, and Leonard Johnson arrested.

May 1, 1969 Thomas Owen Campbell tried, convicted, and sentenced in the Municipal Court.

May 8, 1969

Margaret M. Papachristou, Betty Jean
Calloway, Eugene Eddie Melton, and
Leonard Johnson tried, sentenced, and
convicted in the Municipal Court.

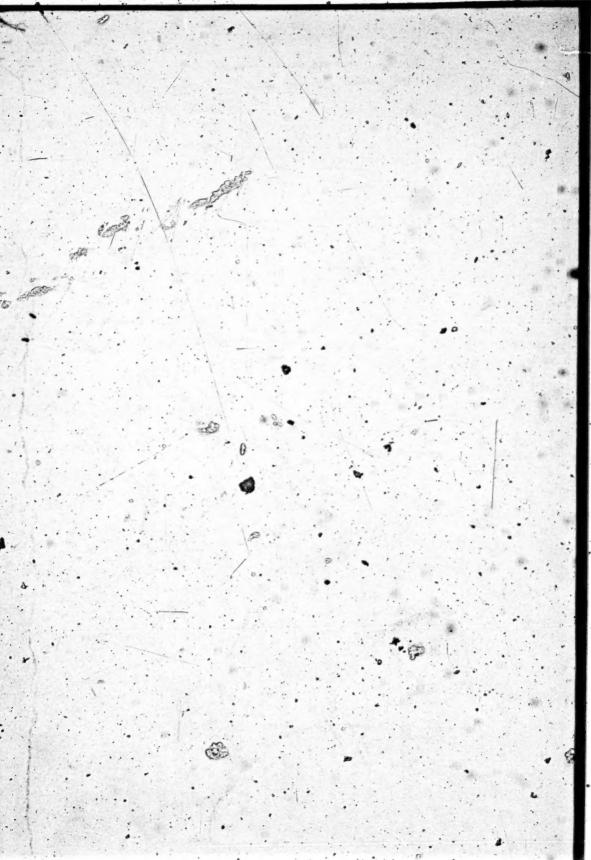
November 28, 1969 Convictions and sentences of all parties affirmed by Circuit Court (after consolidation of all cases for appeal).

December 29, 1969 Petition for Writ of Certiorari filed by all parties in District Court of Appeal, First District of Florida.

CHRONOLOGICAL LISTING OF IMPORTANT EVENTS —Continued

June 9, 1970 Opinion issued by District Court of Appeal, First District of Florida, dismissing Petition for Writ of Certiorari.

June 25, 1970 Mandate issued by District Court of Appeal. First District of Florida.



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State of Florida	CHARGE
THE CITY OF JACKSONVILLE	Vagrancy Disorderly Loitering on Street
vs. NM 25	Disorderly Conduct Resisting Arrest with Violence
Hugh Brown Dofendant	Possession of Narcotics
Defendant arrested by officer J. H. Johns from the defendant	Ohns. Dollars, as security for his appearance before the
City Court. Said defendant, being called for trial on the day of	day of the state o
and not antibering or appearing, IT IS HEKEBY Costreated, and thereupon it is considered and adju-	and not answering or appearing, IT IS HEKEBY OKDEKED. AND ADJUDGED, Indi the said bond estreated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and fro
the said	the sum of Dollar
Attent:	
(Recorder)	
Clerk Municipal Court	
Defendant being arraigned for trial on the 29th	day of January, 1969

SATISFACTION OF JUDGMENT ASSESSING FINE in satisfaction of this judgment. RECEIVED the num of Jacksonville, Fla., Names of Witnesses Sworn for the Prosecution Bondsman Names of Witnesses Swel Received of the Recorder . H. Johns Unknown Return of

guilty to the above charge.

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and entered a plea of.

Continued until _

After hearing the evidence and duly considering the same, the Court finds the defendant Hugh Brown

(C) Nol Bros (B) 90 days (C) No guilty of the charge; it is therefore considered and adjudged by the (A) 90 days

To imprisonment in the city fall for a term of

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In the Municipal Court of the City of Jacksonville, Duyal County, .The Chief of Police took Dollars, as security for his appearance before the estrepted, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from made, it is considered and adjudged by the Court that the said defendant stand committed to the city jast Dollgre, forthwith, and default whereof being and not enswering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond SATISFACTION OF JUDGMENT guilty of the charge; it is therefore considered and adjudged by the Court that the defendant GHARGE Judge Municipal Court ASSESSING FINE in satisfaction of this judgment. VAGRANCY COMMON THIRE After hearing the evidence and duly considering the same, the Court finds the defendant. Henry Edward Heath day of March, 1969 RECEIVED the sum of-Jacksonville, Fla. day of BORIFT OF RECORD PROK DOCKET BOOK 1 PAGE 61139 guilty to the above charge. City Court Said defendent being called for trial on the (Recorder). 4 J. L. Zier 18th Names of Witnessos Sworn for the Prosecution Names of Witnesses Sworn for the Defendant Defendent To imprisonment in the city fail for a term of m the defendant \$500.00 AP Arfilin THE CITY OF JACKSONVILLE Bondsman Defendant being arraigned for trial on the State of Florida VS. WH 25 Defendant arrested by dflicer Continued until Barch 27, 1969 Clerk Municipal Court and entered a plea of NOT for which let execution issue. Received of the Recorder. Henry Edward Heath J. L. Zier ic pay a fine of -Unknown Return of \$ Attent: the said

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Morgan Slaughter Morgan Slaughter erk of Circuit and Municipal Cris & Municipal Court	mitted to the cit
Norgan Staughter erk of Circuit and Municipal Circuit and Municipal Court	
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From the above judgement and sentence the said day of day of the circuit Court in and for Duval County, on the	1
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Clerk Municipal Court	Judge Municipal Court
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J. L. Zier	SATISFACTION OF JUDGMENT
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Names of Wilnesses Sworn for the Defendant	
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***	RECEIVED the sum of satisfaction of this judgment.
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Municipal Court	Judge Municipal Court
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and gave bond with	ties, in the sum of Dollars,
Attest:	

Herk Municipal Court

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the Municipal Court of the C	the Municipal Court of the City of Jacksonville, Duval Courty
State of Florida	Dental
THE CITY OF JACKSONVILLE	
ergaret M. Papachristou	
Defendent / Harding & L.V. Hayes	L.V. Hayes
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Clerk Municipal Court	
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H. Harding & Love, Hayes	SATISFACTION OF JUDGMENT
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for which let execution tenue. Attest: Clerk Municipal Court	
Clerk Municipal Court	
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***************************************	ASSESSING FINE
Names of Witnesses Sworn for the Defendant	
	Jacksonville, Fla., RECEIVED the sum of Dollar
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TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6172

In the Municipal Court of the City of Jacksonville, Duval County

THE CITY OF JACKSONVILLE W. WF 22		Defendant arrested by officer A.V. BAFAIR om the defendant \$500.00 AP Arflin Dollars, as security for his appearance before the	
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Clerk	Clerk Municipal Court	Court	Ĭ	(Recorder)		5	Judge Municipal Court	pal Cour	t	
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se required by less, which was approved.

TRANSCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6168

In the Municipal Court of the City of Jacksonville, Duval County

THE CITY OF JACKSONVILLE We have been by officer H. Hardy Defendant strested by officer H. Hardy The Chief of Police took Defendant strested by officer H. Hardy The Chief of Police took Dollars, as security for his appearance before the ty Court. Said defendant being called for his on the do not shavering or appearing, IT IS HEREBY ORDERED AND ADJUDGED, That the said bond on treated, and thereupon it is considered and adjudged that the City of Jacksonville recover of and from said the sam of Dollars,	State of Florida	CHARGE
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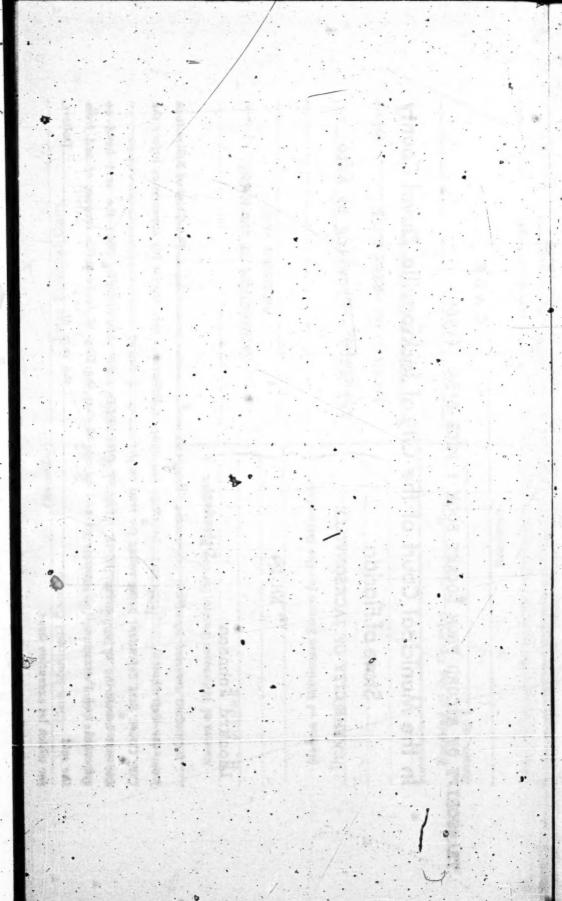
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(1969) SCRIPT OF RECORD FROM DOCKET BOOK 1 PAGE 6169

In the Municipal Court of the City of Jacksonville, Duval County Vagrancy - Prowling by Auto CHARGE THE CITY OF JACKSONVILLE State of Florida W. NM 24 Leonard Johnson.

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

No. 4806-AP 4838-AP 4836-AP 4555-AP 4854-AP 4845-AP

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, APPELLANTS

V8.

CITY OF JACKSONVILLE, APPELLEE

ORDER AFFIRMING

Each of the above causes is an appeal from a conviction in the Municipal Court for the City of Jacksonville. Each appellant was convicted of vagrancy under Section 26-57, Ordinance Code, City of Jacksonville. All of these causes were consolidated for purposes of appeal proceedings, and a joint brief was filed by appellants. Appellants contend that Section 26-57, Ordinance Code, City of Jacksonville violates the Constitutions of the State of Florida and the United States of America. The contention made by the appellants was decided adversely to them in Johnson vs. State, 202 So.2d 852 (Fla. 1967). This Court being bound by the ruling in Johnson vs. States, it is upon consideration

ORDERED that the judgment and conviction entered in the Municipal Court against each appellant is affirmed.

DONE and ORDERED at Jacksonville, Florida, this 28th day fo November, 1969.

/s/ Marion W. Gooding Circuit Judge

IN THE DISTRICT COURT OF APPEAL IN AND FOR THE FIRST DISTRICT OF FLORIDA

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, PETITIONERS

CITY OF JACKSONVILLE, RESPONDENT

PETITION FOR WRIT OF CERTIORABI TO THE CIRCUIT COURT FOR DUVAL COUNTY, FLORIDA

TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA:

Petitioners, Hugh Brown, Jimmy Lee Smith, Henry Edward Heath, Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton, Leonard Johnson and Thomas Campbell, present this, their petition for a writ of certiorari and state:

1. Petitioners seek to have reviewed an order of the Circuit Court for Duval County, Florida dated November 28, 1969, a copy of which is attached hereto as Exhibit A, affirming convictions entered against petitioners in the Municipal Court for the City of Jacksonville, Florida.

2. This petition is presented under and pursuant to Article 5, Section 5 of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

3. This petition is accompanied by a certified transcript of the records of proceedings in the trial court (the Municipal Court for the City of Jacksonville) and a supporting brief.

4. The following are the facts of the case:

Petitioners were all convicted in the Municipal Court for the City of Jacksonville for the offense of vagrancy in violation of Jacksonville Municipal Ordinance, § 26-57 (the Jacksonville vagrancy ordinance). The text of the ordinance is as follows:

"Sec. 26-57. Vagrants.

Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persone who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers, or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for class D offenses. (Code 1942, ch. 33, § 42; Code 1953, § 27-48)."

Petitioners appealed their separate convictions to the Circuit Court for Duval County, Florida, attacking the constitutionality of the vagrancy ordinance. In the Circuit Court the appeals of all the petitioners were consolidated for the purposes of appeal proceedings in that court. This petition involves only the constitutionality of the ordinance on its face, and no detailed statement of the facts of each case is required for disposition of the challenge raised by petitioners.

5. The point of law before the Circuit Court was whether the Jacksonville vagrancy ordinance is constitutional under the Constitutions of the State of Florida and the United States of America. The case against petitioner, Hugh Brown, also resed the question of his right to resist an illegal arrest.

Circuit Judge Marion W. Gooding ruled that the vagrancy ordinance is constitutional, relying upon the deci-

(60)

sion of the Supreme Court of Florida in Johnson vs. State, 202 So.2d 852 (Fla. 1967), and the convictions of

all appellants were affirmed.

6. The order of the Circuit Court constitutes a serious departure from the essential requirements of the law rendering that order illegal and void and further is violative of Sections 1; 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the State of Florida and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, petitioners request this court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed and granting such other and further relief as shall seem right and proper to the court.

DATZ & JACOBSON

By /s/ Samuel S. Jacobson
SAMUEL S. JACOBSON
Attorney for Petitioners
820 First Bank & Trust
Building
Jacksonville, Florida

I DO CERTIFY that a copy hereof was furnished to the Office of the City Attorney, City Hall, Jacksonville, Florida, by mail, this 26th day of December, 1969.

> /s/ Samuel S. Jacobson Attorney

IN THE DISTRICT COURT OF APPEAL IN AND FOR THE FIRST DISTRICT OF FLORIDA

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, PETITIONERS

vs.

CITY OF JACKSONVILLE, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

DATZ & JACOBSON
Attorney for Petitioners
320 First Bank & Trust
Building
Jacksonville, Florida

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Petitioners were all convicted of vagrancy in the Municipal Court for the City of Jacksonville pursuant to Section 26-57 of the Jacksonville Municipal Code. Section 26-57 reads as follows:

"Sec. 26-57. Vagrants.

Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrant, and, upon conviction in the Municipal Court shall be punished as provided for class D offenses, (Code 1942, ch. 33, § 42; Code 1953, \$ 27-48.)

Although each was charged separately in the Municipal Court, there were basically only five cases. In chronological order the cases were as follows:

Hugh Brown vs. City of Jacksonville, date of alleged offense—January 29, 1969.

Jimmy Lee Smith vs. City of Jacksonville, date of alleged offense—February 20, 1969.

 Henry Edward Heath vs. City of Jacksonville, date of alleged offense—March 18, 1969.

4. Thomas Campbell vs. City of Jacksonville, date of

alleged offense—April 18, 1969.

Margaret Papachristou, Betty Jean Calloway, Eugene E. Melton and Leonard Johnson vs. City of Jacksonville, date of alleged offense—April 20, 1969.

In the Circuit Court the cases were consolidated for appeal because each case involved basically a challenge to the constitutionality of the Jacksonville vagrancy ordinance. Petitioner Hugh Brown's case also involved a conviction and sentence for resisting arrest basically

hinging on the constitutionality of his arrest.

Circuit Judge Marion W. Gooding ruled that the Jacksonville vagrancy ordinance is constitutional, basing his ruling upon the decision of the Florida Supreme Court in Johnson vs. State, 202 So.2d 852 (Fla. 1967). Judge Gooding therefore affirmed the convictions of each petitioner; a copy of his order is attached hereto as Exhibit A.

POINTS INVOLVED

POINT ONE

The Vagrancy Ordinance of the City of Jacksonville Is Violative of Sections 1, 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the State of Florida and the First, Fourth, Fifth, Sixth, Eights and Fourteenth Amendments of the Constitution of the United States.

POINT Two

(presented only by the Hugh Brown case)

Hugh Brown Committed No Criminal Offense in
Resisting An Unlawful, Unconstitutional Arrest.

ARGUMENT

POINT ONE

The Vagrancy Ordinance of the City of Jacksonville Is Violative of Sections 1, 8, 11, 12, 16 and 22 of the Declaration of Rights of the Constitution of the

¹ Johnson vs. State, supra, dealt with the Florida vagrancy statute, § 856.02, Florida Statutes. The Jacksonville vagrancy ordinance is, however, identical in substance and almost identical in wording to the Florida vagrancy statute.

State of Florida and the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States.

Petitioners contend that the Jacksonville vagrancy ordiz nance is unconstitutionally vague and indefinite and provides neither notice of the offense sought to be prescribed nor any ascertainable standard of guilty. They also contend that the ordinance on its face can be applied to patently non-criminal conduct and has insufficient relationship to criminality to justify classification as a criminal statute or the imposition of criminal penalties, In-all these respects the ordinance violates the due process provisions of the Constitutions of the State of Florida and the United States of America and the provisions against cruel and inhuman punishment. Petitioners rely on Lazarus vs. Faircloth, 301 F.Supp. 266 (S.D. Fla. 1969); Goldman vs. Knecht, 295 F.Supp. 897 (D. Colo. 1969); Landry vs. Daley, 288 F.Supp. 200 (N.D. III. 1968); Baker vs. Bindner, 274 F.Supp. 658 (W.D. Ky. 1967); Graham ys. State, 447 P.2d 200 (Okla. Ct. Cr. App. 1969); Fenster vs. Leary, 229 N.E.2d 429 (N.Y. 1967); Alegata vs. Commonwealth, 231 N.E.2d 201 (Mass. 1967); and, Parker vs. Municipal Judge of City of Las Vegas, 427 P.2d 642 (Nev. 1967).

Petitioners further contend that the ordinance must be construed in light of its enforcement and utilization as an instrument for harassment and incarceration on suspicion alone. See Shuttlesworth vs. City of Birmingham, 382 U.S. 87 (1965); Kelley vs. United States, 298 F.2d 310 (D.C. Cir. 1961); Landry vs. Daley, 288 F. Supp. 200 (N.D. Ill. 1968); State vs. Jones, 2 Cr. L. Reporter 2498 (County Court for Jefferson County, Colo. 1968).

The ordinance also seeks to make criminal involuntary conditions of life based on such factors as economics, race and other involuntary circumstances and deprives persons subjected to it of equal protection of the law: See Robinson vs. California, 370 U.S. 660 (1962); NAACP vs. Dutton, 371 U.S. 415 (1963); Driver vs. Hinnant, 356 F.2d 761 (4th Cir. 1966); Easter vs. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966).

The ordinance additionally violates the privilege granted in Florida and the United States against self-incrimination insofar as it requires people to offer an account of themselves. See *Miranda* vs. *Arizona*, 384 U.S. 436 (1966); and, *United States* vs. *LoBiondo*, 135 F.2d 130. (2nd Cir. 1943).

Petitioners acknowledge, however, that the Florida Supreme Court upheld the constitutionality of the Florida vagrancy statute in Johnson vs. State, 202 So.2d 852 (Fla. 1967). See also, Headley vs. Selkowitz, 171 So.2d 368 (Fla. 1965); Hanks vs. State, 195 So.2d 49 (3rd D.C.A. Fla. 1967); Reeves vs. State, 187, So.2d 403 (3rd D.C.A. Fla. 1966).

Petitioners submit, however, that the intervening interpretations cited herein with regard to the constitutional protection here in question justify departure from the previous Florida decisions listed above in the preceding paragraph.

POINT TWO

(presented only by the Hugh Brown case)

Hugh Brown Committed No Criminal Offense in Resisting An Unlawful, Unconstitutional Arrest.

For those reasons covered under Point One, the arrest of Hugh Brown was unlawful and unconstitutional. In addition, assuming the constitutionality of the Jackson-ville ordinance, Brown's arrest was illegal because of the absence of any grounds or evidence to support the arrest.

Brown accordingly had a right to resist the arrest and to use such force as was reasonably necessary to effect his escape. Alday vs. State, 57 So.2d 333 (Fla. 1952); Gay vs. State, 3 So.2d 514 (Fla. 1941); Roberson vs. State, 29 So. 535 (Fla. 1901).

CONCLUSION

Wherefore the convictions of all the petitioners should be vacated and set aside.

Respectfully submitted,
DATZ & JACOBSON

By /s/ Samuel S. Jacobson
SAMUEL S. JACOBSON
Attorney for Petitioners
320 First Bank & Trust
Building
Jacksonville, Florida

I DØ CERTIFY that a copy hereof was furnished to the Office of the City Attorney, City Hall, Jacksonville, Florida, by mail, this 26th day of December, 1969.

> /s/ Samuel S. Jacobson Attorney

APPENDIX A

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

No. 4806-AP 4838-AP 4836-AP 4555-AP 4854-AP 4845-AP

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON, and, THOMAS CAMPBELL, APPELLANTS

vs.

CITY OF JACKSONVILLE, APPELLEE

ORDER AFFIRMING

Each of the above causes is an appeal from a conviction in the Municipal Court for the City of Jacksonville. Each appellant was convicted of vagrancy under Section 26-57, Ordinance Code, City of Jacksonville. All of these causes were consolidated for purposes of appeal proceedings, and a joint brief was filed by appellants. Appellants contend that Section 26-57, Ordinance Code, City of Jacksonville violates the Constitutions of the State of Florida and the United States of America. The contention made by the appellants was decided adversely to them in Johnson vs. State, 202 So.2d 852 (Fla. 1967). This court being bound by the ruling in Johnson vs. State, it is upon consideration

ORDERED that the judgment and conviction entered in the Municipal Court against each appellant is affirmed.

DONE and ORDERED at Jacksonville, Florida, this 28th day of November, 1969.

/s/ Marion W. Gooding Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

No. M-488

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON and THOMAS CAMPBELL, PETITIONERS

178.

CITY OF JACKSONVILLE, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DUVAL GOUNTY, FLORIDA

BRIEF OF RESPONDENT

WILLIAM L. QURDEN Special Counsel DAVID U. TUMIN Assistant Counsel

1300 City Hall Jacksonville, Florida 32202 Attorneys for Respondent

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STATEMENT OF THE CASE

Respondent accepts the statement of the case as set forth by petitioners.

POINT INVOLVED

Respondent respectfully rephrases petitioners' Points Involved to read as its following Point Involved:

Whether or Not Common Law Certiorari Is Available to Review the Affirmance By the Court of Final Appellate Jurisdiction Where Said Court of Final Appellate Jurisdiction Proceeded Within Its Constitutional Jurisdiction and the Procedures Were Regular and According to the Essential Requirements of Law.

ARGUMENT

POINT INVOLVED

Common Law Certiorari Is Not Available to Review the Order of Affirmance By the Circuit Court Wherein Said Court of Final Appellate Jurisdiction Under the Constitution Upheld the Validity of the Vagrancy Ordinance in Accord With Prior Decisions of the Supreme Court of Florida.

Respondent respectfully rephrases the petitioners'. Points Involved in order to initially direct this Court's attention to the patent factor that the Court is without jurisdiction to consider the present cause because of the restricted nature to common law certiorari proceedings in this Court. As set forth by the petitioners, the convictions all stemmed for vagrancy under an ordinance of respondent, which ordinance is for all intents and purposes identical to Section 856.02, Florida Statutes. Said convictions were then appealed to the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, which Court has final appellate jurisdiction of all cases arising in municipal courts pursuant to Articles V, Section 6(3), Constitution of the State of Florida. Section

924.08(3), Florida Statutes, also clearly provides that appeals lie to circuit courts from municipal court cases. As stated by this Court in State v. Smith, 118 So.2d 792 (1960), at page 795:

"As to those cases where the Constitution affords final appellate jurisdiction in the circuit courts, certiorari may not be used in this court for the purpose of securing a second appeal, nor to produce the merits for review on appeal. The writ may not be used to review and affirm or reverse the judgment of a circuit court made in the exercise of its final appellate jurisdiction, but requires that the judgment be either quashed, or the writ of certiorari dismissed." (Emphasis supplied)

This Court continued and recognized that certiorari "... is a common law writ issuing in the sound judicial discretion of the court to an inferior court, not to take the place of an appeal, but to cause the entire record of the inferior court to be brought up in order that it may be determined from the face thereof whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of law." The strict limitations of common law certiorari must preclude the petitioners from obtaining a second review of the identical issues so thoroughly reviewed by the Circuit Court in the exercise of its final appellate jurisdiction.

The Supreme Court of Florida in Boyd v. County of Dade, 123 So.2d 323, 326 (1960), specifically recognized that circuit courts have final appellate jurisdiction over

all cases arising in municipal courts.

The present petitioners are now attempting to make the writ of certiorari serve the purpose of an ordinary appellate proceeding. Even the sparse record furnished this Court clearly indicates that the issue now being presented as to the validity of the vagrancy ordinance was carefully presented and carefully studied on appeal in the Circuit Court, with that body of final appellate jurisdiction concurring in the conclusion of the Supreme Court of Florida in Johnson v. State, 202 So.2d 852 (1967), wherein the Supreme Court of Florida had up-

held the validity and constitutionality of the vagrancy statute, Section 856.02, supra. Stated the Court in Johnson v. State:

"We have considered the briefs, arguments and authorities cited and conclude the trial court correctly held Florida Statute, § 856.02, F.S.A. to be constitutional, see Headley v. Selkowitz, 171 So.2d 368, 12 A.L.R.3d 1443 (1965); City of St. Petersburg v. Calback, 114 So.2d 316 (Fla.App.2d 1959); State ex rel. Green v. Capehart, 138 Fla. 492, 189 So. 708 (1939). Appellant's conviction must be upheld, Rinehart v. State, 114 So.2d 487 (Fla.App.2d 1959), certiorari dismissed 365 U.S. 849, 81 S.Ct. 812, 5 L.Ed.2d 813 (1961); Sutherland v. State, 167 So.2d 236 (Fla.App.2d 1964), certiorari denied 173 So.2d 148 (1965)."

Petitioners acknowledge quite candidly that prior decisions have succinctly upheld the constitutionality of the Florida vagrancy statute. They frankly admit that they seek a new determination of the issue despite the well settled Florida approval of the vagrancy statute as

against similar constitutional attacks.

Because of the limited jurisdiction of certiorari, It would appear that this cause is improperly before this Court as an attempt to make the writ of certiorari serve the purpose of an ordinary appellate proceeding, by gaining an impossible second appeal. Such utilization of certiorari has long been precluded under the rulings found in Morris v. State, 110 Fla. 95, 148 So. 182 (1933); State v. Smith, supra; Des Rocher & Watkins Towing Co. v. Third Nat. Bank, 106 Fla. 466, 143 So. 768 (1932); Vanderpool v. Spruell, 104 Fla. 347, 139 So. 892 (1932); and Brinson v. Tharin, 99 Fla. 696, 127 So. 313 (1930).

Moreover, when the appeal was taken, all questions that might have been raised were concluded by affirmance, according to well established rules of Florida appellate practice. See Skipper v. Schumacher, 118 Fla. 867, 160 So. 357 (1935), cert. denied, 296 U.S. 578, 56 S.Ct. 88, 80 L.Ed. 408; Kinsey v. Davis; 154 Fla. 889, 19 So.2d 323 (1944); Hart v. State, 149 Fla. 388, 5 So.

2d 866 (1942). This principle should logically apply to appeals to the Circuit Court, which court had final appellate jurisdiction of this cause under the state Con-

stitution.

To review the final appeal to the Circuit Court would be to pit the judgment of this Court against that of the court having final appellate jurisdiction, a practice which the Constitution never contemplated nor provided for under the reasoning found in American Nat. Bank of Jacksonville v. Marks Lumber & Hardware Co., 45 So.2d 336 (1950). From the aforesaid, the petitioners' issue should not be properly heard by this Court through a petition for writ of certiorari.

Moreover, it is a well settled rule of law in Florida that this Court is without jurisdiction on certiorari unless there is a showing to the lower court proceeded either without jurisdiction or proceeded beyond the essential requirements of law. See American National Bank of Jacksonville v. Marks Lumber & Hardware Co., supra; Benton v. State, 74 Fla. 30, 76 So. 341 (1917). Such rule must logically govern in the District Court of Appeal as well as in the Supreme Court of Florida. The case of Cacciatore v. State, 147 Fla. 758, 3 So.2d 584 (1941), must preclude review by certiorari in the present cause wherein the Court stated at page 586:

"It is settled law that the Supreme Court of Florida had power to review and quash on the common law writ of certiorari the orders and proceedings of inferior courts when they proceed in a cause without jurisdiction, or when their procedure is essentially irregular and not according to the essential requirements of law and when no appeal or direct method of reviewing the order or proceedings exists." (Emphasis supplied) (citing cases)

It should be noted that the rule requires that the lower court must have proceeded in a cause without jurisdiction or that the lower court's procedure be essentially irregular and not according to the essential requirements of law. An additional qualification to the latter require-

ment is to the effect that no appeal or direct method of review of the order or proceedings exist. In the case at bar, there was an appeal and the lower court quite properly had jurisdiction; and the procedure followed therein was essentially quite proper in accordance with the nec-

essary requirements of law.

Moreover, the Supreme Court of Florida in Nation v. State, 155 Fla. 858, 22 So.2d 219 (1945), discussed a similar issue as appears in the case at bar as to the proper use of a writ of certiorari. The Court therein recognized that certiorari was not to give a party a second appeal, but only to cause the record to be brought up in order that a superior court may determine from the face of the record whether the inferior court had exceeded its jurisdiction or had not proceeded in accordance with the essential requirements of law.

Moreover, petitioners overlook the long standing rule concerning certiorari found in Morris v. State, supra, that this Court on certiorari cannot quash a judgment merely because reversible error was committed. The Court continued and again stated that the error complained of must be something more than simply reversible error, in that it must be so flagrant as to constitute a departure from the essential requirements of law with respect to procedural steps necessary to be taken or followed in order to administer justice according to controlling and indispensable rules of law. The Supreme Court therein cited some of the authority upon which respondent has relied above.

Both the petition and the brief in support thereof further raise as a second question the sufficiency of evidence to sustain a conviction relating to one petitioner, Hugh Brown. Such overlooks the long standing rule that certiorari proceedings are not available to review alleged error in the admission of evidence or to review the sufficiency of the evidence as found in Des Rocher v. Third Nat. Bank, supra, and Benton v. State, supra. Thus, again, the record establishes the present attempt is beyond the jurisdictional limitations of common law certiorari review. Moreover, as pointed above, Johnson v.

State, supra, clearly reduces the contention as to the invalidity of the vagrancy ordinance to a nullity.

CONCLUSION

The petition for writ of certiorari should be dismissed, or alternatively, the judgment of the Circuit Court as the court of final appellate jurisdiction approved.

Respectfully submitted,

/s/ William L. Durden
WILLIAM L. DURDEN
Special Counsel

/s/ David U. Tumin DAVID U. Tumin Assistant Counsel

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof has been furnished to Samuel S. Jacobson, Esquire, of Datz & Jacobson, 320 First Bank & Trust Building, Jacksonville, Florida, attorney for petitioners, by United States mail, this 22nd day of January, 1970.

/s/ David U. Tumin Attorney

IN THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA JANUARY TERM, A. D. 1970

Case No. M-488-

HUGH BROWN, JIMMY LEE SMITH, HENRY EDWARD HEATH, MARGARET PAPACHRISTOU, BETTY JEAN CALLOWAY, EUGENE E. MELTON, LEONARD JOHNSON and THOMAS CAMPBELL, PETITIONERS

V8.

CITY OF JACKSONVILLE, RESPONDENT

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED

Opinion filed June 9, 1970.

On Petition for Writ of Certiorari; Original Jurisdiction. Datz & Jacobson, Jacksonville; for Petitioners.

William L. Durden, Special Counsel, and David U. Tumin, Assistant Counsel; for Respondent.

RAWLS, J.

By petition for writ of certiorari, eight petitioners' seek review of an order of the Circuit Judge affirming their convictions in the Jacksonville Municipal Court for violation of the vagrancy ordinance, to wit:

Sec. 26-57. Vagrants.

"Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drankards, common night walkers, thieves, pilferers or pick-pockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place with-

out any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children, shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for class D offenses." (Code 1942, ch. 33, § 42; Code 1953, § 27-48).

The several appeals were consolidated in the Circuit Court where the constitutionality of the ordinance was the only issue for the eight petitioners, except that Petitioner Brown also raised the issue as to whether he had a right to resist arrest. The Circuit Judge found the ordinance constitutional, relying upon Johnson v. State, 202 So.2d 852 (Fla. 1967), and affirmed the convictions.

Petitioners' contention is based primarily upon Lazarus v. Faircloth, 301 F.Supp. 266 (S.D. Fla. 1969). They contend that this federal decision has in effect overruled the Florida Supreme Court's decision in Johnson v. State, supra, which upheld the constitutionality of Section 856.02, Florida Statutes, since the subject ordinance is in all material respects identical in verbiage to the statute. A decision of a Federal District Court, while persuasive if well reasoned, is not by any means binding on the courts of a state. The Supreme Court of Florida is the apex of the judicial system of the State of Florida, and its decisions are binding upon this court.

As to Brown's contention that no criminal offense is committed in resisting an unlawful and unconstitutional arrest, our conclusion as to the validity of the ordinance

disposes of that contention.

Further, as ably argued by the City, first appellate jurisdiction of all cases arising in municipal courts is vested in the Circuit Court pursuant to provisions of Article V, Section 6(3), Constitution of the State of Florida. This Court in State v. Smith, 118 So.2d 792, 795 (Fla. App. 1st 1960), held:

"As to those cases where the Constitution affords final appellate jurisdiction in the circuit courts, certiorari may not be used in this court for the purpose of securing a second appeal, nor to produce the merits for review on appeal. The writ may not be used to review and affirm or reverse the judgment of a circuit court made in the exercise of its final appellate jurisdiction, but requires that the judgment be either quashed, or the writ of certiorari dismissed."

Petitioners are obviously attempting to secure a second appeal by means of common law writ of certiorari to review the judgment of the Circuit Court which exercised its final appellate jurisdiction. The writ will issue only where the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law. The Circuit Court sitting as an appellate court did not exceed its jurisdiction and did not depart from the essential requirements of the law, but, on the contrary, properly followed the decision of the highest appellate court of this State, Johnson v. State, supra.

The petition for writ of certiorari is dismissed.

Johnson, Chief Judge, and Spector, J., Concur.

MANDATE

From '

DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

To the Honorable, the Judges of the Circuit Court for the Fourth Judicial Circuit of Florida. Greetings:

WHEREAS, Lately in the Circuit Court of The Fourth Judicial Circuit for the County of Duval in a cause therein styled:

Case Nos. 4806-AP, 4836-AP 4845-AP, 4555-AP 4854

CITY OF JACKSONVILLE

28.

HUGH BROWN, ET AL.

the Orders of said Court was rendered November 28, 1969, as appears by inspection of the pertinent record of the said Court in said cause, which was brought into the District Court of Appeal of Florida, First District, by virtue of proceedings agreeable to the laws of said State in such case made and provided;

AND WHEREAS, the said cause came on to be heard before the said District Court, in consideration whereof, on June 9, 1970, the said District Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof, therefore:

It is Ordered by the Court that the
do have and recover of and from the document that the
costs in this behalf expended herein taxed at
Twenty Five Dollars, and that all costs shall be taxed in
the said lower court; and

• YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to

right, justice, the judgment of said Court, and the laws of the State of Florida, ought to be had, the said Orders of said Circuit Court notwithstanding.

WITNESS, The Honorable Dewey M. Johnson, Chief Judge of said District Court, and seal of said Court at Tallahassee, this 25th day of June, 1970. [SEAL]

/s/ Raymond E. Rhodes
Clerk District Court of Appeal
of Florida, First District

SUPREME COURT OF THE UNITED STATES No. 5983, October Term, 1970

MARGARET PAPACHRISTOU, ET AL., PETITIONERS

CITY OF JACKSONVILLE

On petition for writ of Certiorari to the District Court of Appeal of the State of Florida, First District.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 14, 1971